

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRUCE C. McNEIL,

Plaintiff,

v.

20-CV-998-LJV-HKS
DECISION & ORDER

CITY OF BUFFALO, *et al.*,

Defendants.

On July 31, 2020, the plaintiff, Bruce C. McNeil, commenced this action under 42 U.S.C. § 1983. Docket Item 1. On September 23, 2020, several defendants answered the complaint, Docket Item 7, and all defendants moved to dismiss certain claims, Docket Item 8.¹ On November 6, 2020, the plaintiff responded to the motion to dismiss, Docket Item 12; and on November 13, 2020, the defendants replied, Docket Item 13.

On January 12, 2021, this Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 14. On February 24, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”) finding that the defendants’ motion should be granted in part and denied in part. Docket Item 19. More specifically, Judge Schroeder recommended granting the motion as to the punitive damages claim against the City of Buffalo, *id.* at

¹ Because the defendants moved to dismiss after some defendants answered, the defendants’ motion to dismiss is deemed a motion for judgment on the pleadings as to the defendants who answered. See *Patel v. Contemp. Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001); Fed. R. Civ. P. 12(c). This distinction does not affect the outcome of the motion, however, because courts apply the same standard to Rule 12(b)(6) motions to dismiss and Rule 12(c) motions for judgment on the pleadings. See *Mantena v. Johnson*, 809 F.3d 721, 727-28 (2d Cir. 2015).

11-12; all claims against Buffalo Police Commissioner Byron Lockwood, *id.* at 12-13; and all official-capacity claims against the individual defendants, *id.* at 11. But Judge Schroeder recommended denying the motion as to the *Monell* liability claims against the City of Buffalo, *id.* at 8-11; the Fourteenth Amendment claims for false arrest and unlawful stop, *id.* at 13-14; and the conspiracy claims, *id.* at 14-17. The parties did not object to the R&R, and the time to do so has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's careful and thorough R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to grant the defendants' motion in part and deny the defendants' motion in part.

For the reasons stated above and in the R&R, the defendants' motion to dismiss or for judgment on the pleadings, Docket Item 8, is GRANTED only as to McNeil's punitive damages claim against the City of Buffalo, his claims against Lockwood, and his official-capacity claims against the individual defendants, and those claims are

dismissed. The defendants' motion is DENIED as to all other claims, including McNeil's *Monell* liability claims against the City of Buffalo, his Fourteenth Amendment claims for false arrest and unlawful stop, and his conspiracy claims. The Clerk of the Court shall terminate Lockwood as a defendant in this action. The case is referred back to Judge Schroeder for further proceedings consistent with the referral order of January 12, 2021, Docket Item 14.

SO ORDERED.

Dated: March 20, 2023
Buffalo, New York

/s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE